



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT EMBU**

**Civil Case 31 of 2003**

**HENRY NJERU .....PLAINTIFF**

**VERSUS**

**AGRICULTURAL FINANCE CORPORATION.....DEFENDANT**

**JUDGMENT**

The plaintiff claims a declaration that the sale of the plaintiffs parcel No. Title Gaturi/Nembure/1934 which took place on 16/8/1997 was null and void ab initio and an injunction to restrain the Defendant from interfering with the said parcel of land and to adhere to the terms of charge.

The plaintiff admits that he did secure a loan with a charge on that parcel of land. The plaintiff also admits having paid a first instalment in the sum of **Shs.1500/= (2374.20)** He also got some Kirurumwe Farmers to repay balance of instalments and some 2,155/= was paid. The loan was in the sum of **10,000/=** payable by instalments yearly amounting **Shs. 2,375.20** each. The plaintiff claim is defended. The defendant pleads that the parcel No. **Gaturi/Nembure/1934** was sold on 16/8/1979 when the defendant exercised its power of sale granted under chapter 323 sold the land in a public auction. The defendant also pleads that the plaintiff is barred from bringing a fresh suit when **Nairobi HCC No. 2993 of 1979** was dismissed and furthermore the suit is time barred. These two issues were argued before **Lenaola J.** who dismissed the objections.

On the hearing of this case the plaintiff only appeared. He filed affidavit of service and was allowed to proceed to hearing. It is his evidence that he charged his 5 acre land **Gaturi/Nembure/1934** to the defendant in the sum of **Shs.10,000/-** plus interest as shown in the notification of sale.

He testified that he was to pay the loan plus interest and he made first payment by instalments of Shs.2374.20 annually. This is not disputed. He admitted he was late to pay for 1979. Then they refused to accept the payments after that default. He requested a society called Kirurumwe Farmers to pay who undertook to pay on behalf of the plaintiff and issued cheque. The plaintiff admits the property was auctioned for shs.25,000/=. The plaintiff made effort to refund the money but this was rejected. The plaintiff states that the outstanding sum was only 2374.20 and the land was 5 acres. The plaintiff therefore states that it was unreasonable on the part of defendant. The Plaintiff in his plaint pleads that that sale is null and void and arbitrary and malicious negligence and illegal and therefore he should have an order declare the sale vi dab initio and injunction that the Defendant should adhere to the terms of the charge. The terms of loan required repayments in the sum of Shs.2374/20 per year. The plaintiff says he paid for first year 1978 in October 1978 and he was late to pay for 1979 which payment would have fallen in October that year as agreement paragraph (45) which states "As for Development loan by Five Annual Instalments of Shs.2374/20 from 30/10/1978 and thereafter on the last day of October in each year...). Therefore the time the Fore .....Notice was issued on 10/5/1979. And the letter dated

18/7/1979 warning of sale the second instalment was not due. The plaintiff was not in default.

In the circumstances it is clear that the plaintiff land was sold prematurely nevertheless the plaintiff made an effort and paid 25,000/= even before the 1979 deadline had fallen. The plaintiff states that he set an injunction and he is still living on the land within his family. There is no abstract of title exhibited now but a copy on record shows no registration has been entered after the Notification of Sale.

From the evidence on record it is clear to the court and I find that the purported sale of the plaintiff's land namely **Gaturi/Nembure/1934** by the Defendant is null and void ab initio.

Judgment is hereby entered for plaintiff against defendant as prayed in the plaint with costs.

It is so ordered.

Dated this 21<sup>st</sup> June, 2007.

**J. N. KHAMINWA**

**JUDGE**

**21/6/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Plaintiff present**

**Judgment read in open court.**

**J. N. KHAMINWA**

**JUDGE**